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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

BEISNER, WILLIAM H

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 10/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/688,143

Applicant(s)

NEWBURG, DOUGLAS A.

Examiner

William H. Beisner

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-3 is/are allowed.
- 6) ☒ Claim(s) 4-15, 17 and 19-27 is/are rejected.
- 7) ☒ Claim(s) 16 and 18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 17. 6) ☐ Other: _____

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed 06 Aug. 2003 has been considered and made of record.

Previously indicated Allowable Subject Matter

2. The indicated allowability of claim 14 is withdrawn in view of the newly discovered reference(s) to Richter (US 4,594,904) or Talbot et al.(US 2,012,836). Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 19-21, 25 and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 19, line 4, "said valve body" lacks antecedent basis. Note claim 15 is silent as to the presence of a "valve body".

In claims 20 and 25, it is not clear if the recited "internal cavity" is included in the previously recited "valve body" or an additional structure of the claimed valve of claims 7 and

11. Claims 7 and 11 define the valve structure in terms of the valve body.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 14 is rejected under 35 U.S.C. 102(b) as being anticipated by Talbot et al.(US 2,012,836).

The reference of Talbot et al. discloses a valve that can be used in a vessel or conduit (1). The valve includes a valve body (7) having an internal cavity (defined by wall (13)) with a sampling orifice (15) located in a forward portion thereof. The bottom of the internal cavity continuously declines from the orifice to and exit of the valve body. The valve body (7) has a longitudinal axis that is perpendicular to opening (5) in the conduit or vessel (1) and the longitudinal axis extending through the center of the orifice (15) is “offset” or at an angle to the longitudinal axis of the valve body (7).

7. Claim 14 is rejected under 35 U.S.C. 102(b) as being anticipated by Richter (US 4,594,904).

The reference of Richter discloses a valve that can be used in a vessel or conduit (226). The valve includes a valve body (17) having an internal cavity (29) with a sampling orifice (See Figure 1) located in a forward portion thereof. The bottom of the internal cavity (29) continuously declines from the orifice to and exit of the valve body. The valve body (17) has a

Art Unit: 1744

longitudinal axis that is perpendicular to an opening in the conduit or vessel (226) and the longitudinal axis extending through the center of the orifice is "offset" or at an angle to the longitudinal axis of the valve body (17).

8. Claims 15 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Vogel-Jorgensen (US 1,969,081).

The reference of Vogel-Jorgensen discloses a sample valve device that includes a ferrule mounted in a wall of a vessel (See the neck of vessel (a) in Figure 1). The ferrule has an internal bore with a longitudinal axis. The device includes a valve having a valve body (c) mountable at least partially into the internal bore of the ferrule. The valve or valve body has a sample cavity (e) or (f) with a sampling orifice located in a forward portion thereof. The orifice has a longitudinal axis extending through a center thereof. The longitudinal axis of the orifice is generally parallel to and offset from the longitudinal axis of the internal bore. With respect to claim 17, either of the orifices can be considered to be offset above the bore axis since they are not coaxial with the bore axis.

9. Claims 15 and 17 rejected under 35 U.S.C. 102(b) as being anticipated by Shaw (US 2,314,167).

The reference of Shaw discloses a sample valve device that includes a ferrule (11) mounted in a wall of a vessel (See the neck of vessel (10) in the Figures). The ferrule has an internal bore with a longitudinal axis. The device includes a valve having a valve body (12) mountable at least partially into the internal bore of the ferrule (11). The valve or valve body

Art Unit: 1744

(12) has a sample cavity (15) or (16) with a sampling orifice located in a forward portion thereof. The orifice has a longitudinal axis extending through a center thereof. The longitudinal axis of the orifice is generally parallel to and offset from the longitudinal axis of the internal bore. With respect to claim 17, either of the orifices can be considered to be offset above the bore axis since they are not coaxial with the bore axis.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

12. Claims 4-9 and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over any of Terkel (US 2,197,352) in view of Meyer (US 4,669,321).

The reference of Terkel discloses a valve installed in a ferrule (See outlet (9)) in a wall of a vessel or conduit. The ferrule has an internal bore with a longitudinal axis. The valve

Art Unit: 1744

includes a valve body (See element (6)) that includes an internal drainage path (See path (23)) with an angle of declination in a direction away from the vessel or conduit.

While the above claims recite a valve in combination with a ferrule, claims 4-9 and 11-13 differ by reciting that the valve is employed in combination with a ferrule which includes an inner bore having an angle of inclination.

The reference of Meyer discloses that it is known in the art to provide sampling ferrules in the walls of vessels or conduits which include an internal bore with an angle of inclination (See Figure 1).

In view of this teaching, it would have been obvious to one ordinary skill in the art to employ the valve of the primary reference with the ferrule of the device of the reference of Meyer for the known and expected result of providing the sampling valve of the primary reference in combination with a known fitting or ferrule for sampling liquids from a vessel or conduit. It would have been obvious to one of ordinary skill in the art to compensate for the angle of inclination of the ferrule while still maintaining the required declination of the drainage path in the sampling valve of the primary reference. Employment of the valve of the primary reference in a ferrule of Meyer as suggested above would inherently result in a drainage path that passes above and beyond a lower rear margin of the ferrule.

13. Claims 4-13 and 20-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Talbot et al.(US 2,012,836) in view of Meyer (US 4,669,321).

The reference of Talbot et al. discloses a valve installed in a ferrule (See threaded portion of element (1)) in a wall of a vessel or conduit. The ferrule has an internal bore with a

Art Unit: 1744

longitudinal axis. The valve includes a valve body (See element (7)) that includes an internal drainage path (See path defined by element (13)) with an angle of declination in a direction away from the vessel or conduit.

While the above claims recite a valve in combination with a ferrule, claims 4-9 and 11-13 differ by reciting that the valve is employed in combination with a ferrule which includes an inner bore having an angle of inclination.

The reference of Meyer discloses that it is known in the art to provide sampling ferrules in the walls of vessels or conduits which include an internal bore with an angle of inclination (See Figure 1).

In view of this teaching, it would have been obvious to one ordinary skill in the art to employ the valve of the primary reference with the ferrule of the device of the reference of Meyer for the known and expected result of providing the sampling valve of the primary reference in combination with a known fitting or ferrule for sampling liquids from a vessel or conduit. It would have been obvious to one of ordinary skill in the art to compensate for the angle of inclination of the ferrule while still maintaining the required declination of the drainage path in the sampling valve of the primary reference. Employment of the valve of the primary reference in a ferrule of Meyer as suggested above would inherently result in a drainage path that passes above and beyond a lower rear margin of the ferrule.

With respect to claims 10, 20, 22, 24, 25 and 27, the longitudinal axis of the orifice (15) is offset with respect to the longitudinal axis of the body (7) and/or the bore of the ferrule.

Art Unit: 1744

With respect to claims 21, 23, and 26, in the absence of further positively recited claim language, the axis of the orifice is considered to be offset above the axis of the bore since the orifice opening points above the axis of the bore of the ferrule.

Double Patenting

14. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

15. Claims 4-9 and 11-13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9, 15 and 16 of U.S. Patent No. 5,296,197 in view of Meyer (US 4,669,321).

Claims 1-9, 15 and 16 of U.S. Patent No. 5,296,197 encompass a valve device which includes a valve body having an internal drainage path with an angle of declination in a direction away from the vessel or conduit which it is intended to be used.

While the above claims recite a valve device which is the same as that instantly claimed, claims 4-9 and 11-13 differ by reciting that the valve is employed in combination with a ferrule which includes an inner bore having an angle of inclination.

Art Unit: 1744

The reference of Meyer discloses that it is known in the art to provide sampling ferrules in the walls of vessels or conduits which include an internal bore with an angle of inclination (See Figure 1).

In view of this teaching, it would have been obvious to one ordinary skill in the art to employ the valve of the claims of U.S. Patent with the ferrule of the device of the reference of Meyer for the known and expected result of providing the sampling valve of the patent claims in combination with a known fitting or ferrule for sampling liquids from a vessel or conduit. It would have been obvious to one of ordinary skill in the art to compensate for the angle of inclination of the ferrule while still maintaining the required declination of the drainage path in the sampling valve of the U.S. Patent claims. Employment of the valve of the patented claim in a ferrule of Meyer as suggested above would inherently result in a drainage path that passes above and beyond a lower rear margin of the ferrule.

16. Claims 4-9 and 11-13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 7 and 10 of U.S. Patent No. 5,786,209 in view of Meyer (US 4,669,321).

Claims 1, 7 and 10 of U.S. Patent No. 5,786,209 encompass a valve device which includes a valve body having an internal drainage path with an angle of declination in a direction away from the vessel or conduit which it is intended to be used.

While the above claims recite a valve device which is the same as that instantly claimed, claims 4-9 and 11-13 differ by reciting that the valve is employed in combination with a ferrule which includes an inner bore having an angle of inclination.

Art Unit: 1744

The reference of Meyer discloses that it is known in the art to provide sampling ferrules in the walls of vessels or conduits which include an internal bore with an angle of inclination (See Figure 1).

In view of this teaching, it would have been obvious to one ordinary skill in the art to employ the valve of the claims of U.S. Patent with the ferrule of the device of the reference of Meyer for the known and expected result of providing the sampling valve of the patent claims in combination with a known fitting or ferrule for sampling liquids from a vessel or conduit. It would have been obvious to one of ordinary skill in the art to compensate for the angle of inclination of the ferrule while still maintaining the required declination of the drainage path in the sampling valve of the U.S. Patent claims. Employment of the valve of the patented claim in a ferrule of Meyer as suggested above would inherently result in a drainage path that passes above and beyond a lower rear margin of the ferrule.

Allowable Subject Matter

17. Claims 1-3 are allowed.

18. Claims 16 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Art Unit: 1744

19. Claim 19 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

20. The following is a statement of reasons for the indication of allowable subject matter:

With respect to claims 1-3, while the prior art of record clearly discloses a valve structure for insertion into a ferrule having an internal diameter wherein the valve includes a sampling orifice, a drain outlet and a sample cavity connecting the orifice and outlet, the prior art of record fails to teach or fairly suggest providing a sampling orifice diameter determined by the formulas recited in claims 1, 2 or 3.

With respect to claims 16, 18 and 19, while the prior art of record discloses or suggests, valve and ferrule combinations that include an orifice with a longitudinal axis and a ferrule with an internal bore with a longitudinal axis and a valve body with a longitudinal axis wherein the valve body and ferrule bore have the same longitudinal axis and wherein the longitudinal axis of the orifice is generally parallel and offset to the longitudinal axis of the valve body and ferrule bore (See the rejection of claim 15 above over either Vogel-Jorgensen (US 1,969,081) or Shaw (US 2,314,167), the prior art does not further suggest the use of an orifice with a longitudinal axis that is generally parallel and offset with respect to the longitudinal axis of the valve body or ferrule bore and includes a drain passage that is nonparallel and declines relative to the axis of the ferrule bore.

Response to Arguments

Art Unit: 1744

21. Applicant's arguments, see pages 15-18, filed 28 July 2003, with respect to the rejection of claims 1, 2 and 15 over the reference of Ranjith (GB 2 220 250) have been fully considered and are persuasive. The rejection of claims 1, 2 and 15 has been withdrawn.

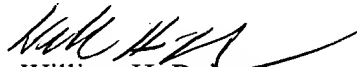
22. The terminal disclaimer filed 23 July 2003 is sufficient to overcome the obviousness-type double patenting rejection of claims 3-9 and 11-13 of U.S. Patent No. 6,133,022.

Conclusion

23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Beisner whose telephone number is 703-308-4006 (after 12/16/03 571-272-1269). The examiner can normally be reached on Tues. to Fri. and alt. Mon. from 6:40am to 4:10pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J. Warden can be reached on 703-308-2920 (after 12/16/03 571-272-1281). The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.


William H. Beisner
Primary Examiner
Art Unit 1744

WHB